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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,)	No. 4-08-70022 WDB
)	
Plaintiff,)	
)	
v.)	EMERGENCY MOTION AND ORDER
)	TO STAY RELEASE ORDER PENDING
CHAD A. HOLSTE,)	RECONSIDERATION AND FURTHER
)	REVIEW
Defendant.)	

The United States files this Emergency Motion to Stay the Release Order issued by Magistrate Judge Wayne D. Brazil. Judge Brazil is currently unavailable until Monday, January 28, 2008. The United States thereby requests the stay pending reconsideration and further review so the Court may consider additional evidence which was not known by counsel or the Court at the time of the original hearing. The additional evidence demonstrates that the defendant is a danger to the community and that he should not be released from custody. Staying the order one business day will allow the United States to seek reconsideration by Judge Brazil of the release order in the context of the additional evidence.

On January 16, 2008, Special Agents from Immigrations and Customs Enforcement,

1 along with the Fremont Police Department, executed a federal search warrant of the defendant
2 Chad A. Holste's residence/dormitory located on the DeVry University campus in Fremont,
3 California . The defendant is a nineteen-year-old male with no criminal history. When Special
4 Agents performed a forensic preview/search of the defendant's desktop computer, they found
5 numerous images of child pornography. These images included small children and toddlers
6 engaged in sexually explicit conduct as defined in 18 U.S.C. § 2256. Special Agents also found
7 several firearms in the defendant's truck. The defendant was arrested on the same date. On the
8 following morning of January 17, 2008, the defendant appeared before Judge Brazil and was
9 arraigned on a Criminal Complaint charging violations of Title 18, United States Code §§
10 2252(a)(1) and (a)(4)(B). Based upon the Government's motion, and pursuant to the
11 presumption under 18 U.S.C. § 3142(f) that the defendant was a danger to the community, Judge
12 Brazil ordered the defendant detained for three days. Judge Brazil then set the matter on
13 Magistrate Laporte's calendar for Wednesday, January 23, 2008, for submission of a financial
14 affidavit and a detention hearing.

15 Over the next several days, undersigned counsel for the United States and counsel for the
16 defendant, Jerome Matthews, discussed possible release conditions which would reasonably
17 assure the appearance of the defendant and would reasonably account for the safety of the
18 community. The parties were able to reach an agreement and Mr. Matthews re-scheduled the
19 detention hearing for January 22, 2008, at 10:00 a.m. before Judge Brazil.

20 At the detention hearing, the parties conveyed to the Court the agreement and the
21 conditions for the defendant's release. The terms of the agreement included, *inter alia*, that: 1)
22 the defendant would reside with his parents in Redding, California; 2) the defendant be subject to
23 electronic monitoring; 3) the defendant's parents would secure a \$250,000 bond with the title to
24 their home in Redding, California; 4) the defendant's father would act as a custodian; 5) the
25 defendant was to have no access to dangerous weapons including firearms or knives; and 6) the
26 defendant would have no access to a computer. Given the agreed upon conditions, Judge Brazil
27 ordered that the defendant be released from custody as soon as Mr. Matthews had completed
28 transfer of the title of the parents home to the Clerk of the Court. Additionally, Mr. Matthews

1 was also required to provide adequate documentation showing sufficient equity in the property.
2 Mr. Matthews promptly completed the process on the morning of January 24, 2008. Upon
3 receipt and review of the documentation, the United States notified Judge Brazil's Court Clerk
4 that the conditions for release had been satisfied. Pursuant to the terms of the bond, the
5 defendant was then scheduled to be released from the U.S. Marshall's custody on the morning of
6 Friday, January, 25, 2008.

7 Also on the morning of January 24, 2008, ICE Special Agent Dana Unger delivered the
8 discovery in the case to undersigned counsel. Whereas, after completing review of the real
9 estate transaction documents and speaking with Judge Brazil's Court Clerk, counsel began to
10 review the discovery. Approximately one to two hours into the review of the discovery, counsel
11 for the United States found disturbing information related to the defendant's character, potential
12 propensity for violence, and danger to the community. As this information was not previously
13 known to counsel, nor was it presented to the Court at the original detention hearing, the United
14 States respectfully requests that the release order be stayed pending further review by Judge
15 Brazil. This new information demonstrates that there are no restrictions that can be placed upon
16 the defendant which will reasonably assure the safety of the community.

17 The troubling information comes from the defendant's personal website located on
18 MySpace.com. On this personal website, the defendant expresses his views and thoughts. In
19 one place he states:

20 Gunfire speaks the loudest.

21 There comes a time when the tyranny of government becomes
22 intolerable to the common man. It grinds at his spirit every day
23 with it's rules and regulations. It chaffes at his freedom with it's
24 conventions.

25 In the past, this was the time when men took up sword and spear
26 and struck down their oppressors. Today, the sword is the pistol,
27 and the spear is the rifle.

28 A single shot can change the world. Would you pull the trigger?

Ex. 1. This statement express a desire to cause harm and danger to the community and its
government. Likewise, this statement was made very recently as shown by the posting date of

1 November 15, 2007. The defendant's friend "Monkey" responds to the defendant's question
2 about pulling the trigger by suggesting that he would in fact commit mass murder:

3I think if you fire upon a man then you better be willing to kill
4 all that are related to him...if not then you might have to worry
about the son or people like him.....

5 *Id.* Similarly, the second response to the defendant's same question by his friend "aaron" is
6 equally disturbing and also suggests the killing of multiple people:

7 not only would i pull the trigger, i would empty the entire damn
8 clip into him/her to make sure the job was done, then i would
watch and see who steps up to take his place and see if he needs to
be marked as a target

9 *Id.*

10 Furthermore, on the defendant's home page, near the top next to his picture, the first
11 information to which the defendant directs the reader, suggests some kind of mass murder and/or
12 death:

13 "And we went amongst them, and in the morning not one of them
14 lived. Young and old, man and woman, we doomed them all"

15 Ex. 2. Additionally on his home page, the defendant describes the type of people he would like
16 to meet on his social networking website by stating:

17 Seriously though, I'm looking for decent (in)human beings to join
18 my army of darkness....

19 *Id.*

20 In another place, the defendant describes "The Legitimacy of Hate" by claiming:

21 Often I hear people decrying hate as a terrible thing. However,
22 they completely miss how powerful of an emotion hate can be,
23 how much of a driving force it can be. I asked a soldier who fought
in the pacific what he felt when he was fighting, and he said hate,
24 hate for the Japanese. I asked a soldier who fought in France the
25 same thing, and he gave me the same answer; hate for the
Germans. It's what made them fight to the death instead of giving
26 up, it's what made them such terrible foes. Even now, when we
have no great centralized enemy to point at and say "I hate that",
hate can still be a mighty tool. Hatred can make a man powerful, it
can make him dangerous. Don't be afraid to hate, use it, don't fear
it.

27 Ex. 3, at June 29, 2007.

28 These insights into the defendant's mind were not previously known to counsel or the

1 Court at the detention hearing. Such evidence is deeply concerning and demonstrates mental
2 instability, hatred and anger, an apparent disregard for human life, and a clear danger to the
3 community. The result of anyone taking any action upon the defendant's thoughts or statements
4 would result in the serious injury or death of others. These expressions should not be ignored
5 and should be considered by the Court.

6 Moreover, at the previous detention hearing the defendant represented that the guns
7 found in his truck were solely for target shooting in Redding, California. However, it becomes
8 clear from the additional evidence that target shooting may not be the defendant's only motive.
9 Taking the firearms together with the defendant's statements shows a danger and propensity for
10 violent behavior. Additionally, the mere act of posting inflammatory comments about hatred and
11 killing others shows a willingness by the defendant to encourage others to engage in violent and
12 dangerous behavior. In sum, the evidence demonstrates a complete disregard for safety of
13 others. Given the defendant's state of mind, it is clear that even his parents would have little
14 control over the defendant if he were released. Indeed, because of the change in circumstance
15 and the additional evidence, the United States respectfully request that the Court grant a stay of
16 the release order pending reconsideration and further review.

17 In the alternative to granting the stay of the release order, the United States is willing and
18 available to appear before duty Magistrate Judge Bernard Zimmerman on Friday, January 25,
19 2008, for a further review of these detention issues.

20
21 JOSEPH P. RUSSONIELLO
22 United States Attorney

23 /S/

24 Dated: January 24, 2008


25 BRYAN R. WHITTAKER
26 Special Assistant United States Attorney
27
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OAKLAND DIVISION

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Upon motion of the United States of America, and good cause appearing therefore,
IT IS HEREBY ORDERED that the United States' request to Stay the Release Order
Pending Reconsideration and Further Review before the Honorable Wayne D. Brazil, United
States Magistrate Judge on Monday, January 28, 2008, at 10:00 a.m., is GRANTED, and the
defendant shall remain detained and in the custody of the United States Marshall until such date
or as otherwise ordered by this Court.

Dated: January 25, 2008


HONORABLE WAYNE D. BRAZIL
United States Magistrate Judge